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May 14, 2014

VIA HAND DELIVERY

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Re: MUR 6799/Frank Scaturro, Frank Scaturro for Congress, and John F. Craven,
individually and as treasurer of Frank Scaturro for Congress

Dear Mr. Jordan:

This response is submitted on behalf of Frank Scaturro, Frank Scaturro for Congress (the "Frank Scaturro Campaign"), and John F. Craven, individually and as treasurer of Frank Scaturro for Congress (collectively, the "Respondents") in response to the complaint and supplements filed by Avi Z. Fertig on March 13, 2014 and March 19 and 28, 2014, respectively, alleging a laundry list of supposed violations of the Federal Election Campaign Act ("FECA") and Federal Election Commission ("FEC" or the "Commission") regulations.

Mr. Fertig's multiple complaints appear to have been designed to simply harass the Respondents using the Commission's enforcement process. As set forth in greater detail below, his complaints lack any substantive basis in law or fact and are merely of a technical nature.

Accordingly, the Respondents respectfully request that the Commission take no further action in this matter and dismiss Mr. Fertig's frivolous allegations.

I. Allegations of Missing "Paid For" Disclaimers

Mr. Fertig's March 13th complaint and March 19th supplement allege a number of supposed violations of 2 U.S.C. § 441d and 11 C.F.R. § 110.11. FECA requires all public communications by a political committee to disclose who paid for and authorized the communication. *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). This disclaimer requirement also applies to all substantially similar email communications sent to more than 500 recipients. 11 C.F.R. § 110.11(a)(1). Communications paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents must clearly state that the communication was paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1).

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A. March 13th Complaint

In his March 13th complaint, Mr. Fertig alleges that the Respondents violated 2 U.S.C. §441d and 11 C.F.R. §110.11 by failing to provide a disclaimer on an email communication dated March 7, 2014. *See* March 13th Complaint at Exhibit A. Nevertheless, it was obvious to the recipients that the Respondents authorized and paid for the email based on its content and the circumstances surrounding its dissemination.

The Commission has routinely and repeatedly held that the disclaimer requirement is met where it is clear to the public who is responsible for the particular communication. *See* General Counsel's Report, MUR 6270 (Paul) ("In similar matters involving incomplete or missing disclaimers, where there was sufficient information to identify the Committee payor, the Commission has exercised its prosecutorial discretion and dismissed the disclaimer violation allegations."); MUR 6438 (Art Robinson for Congress) ("[T]hey contained sufficient information for the recipients to identify the emails as authorized emails and to identify Robinson's campaign as the payor."); MUR 6027 (Dole) (holding that disclaimers were sufficient to "indicate that the public would not have been misled as to who paid for the advertisement"); MUR 5775R (Pryce) ("[I]t appears that viewers were apprised of the salient information.").

Here, the email in question rallied public support for Frank Scaturro's campaign; incorporated the Frank Scaturro Campaign's logo as part of the event invitation; included the URL of the Frank Scaturro Campaign's website in the sender's email signature; and stated that the mailing address was "Frank Scaturro for Congress – 515 Herricks Rd, Suite 4, New Hyde Park, NY 11040, United States." Given Mr. Fertig's ability to file a complaint against the Respondents specifically, he demonstrated no difficulty in identifying that the email in question was paid for and approved by the Respondents.

To the extent that any of the Respondents' previous communications failed to include a disclaimer, as evidenced by the communications submitted by Mr. Fertig in his March 19th and 28th supplements, the Respondents have subsequently changed the campaign's internal procedures to ensure that the appropriate disclosure is included in all campaign email messages.

B. March 19th Supplement

In his March 19th supplement, Mr. Fertig alleges that two additional communications failed to disclose who paid for and authorized the communications. However, Mr. Fertig appears to have simply copied verbatim sections from his March 13th complaint in conjuring alleged violations of FECA and FEC regulations. Exhibit A of the March 19th supplement clearly includes the disclaimer "Paid for by Frank Scaturro for Congress" at the bottom of the email invitation, while Exhibit B includes the disclaimer at the bottom of the webpage.

With respect to the webpage in question, Mr. Fertig alleges that the disclaimer requirement is not satisfied because the disclaimer is found at the bottom of the website and not in the disclaimer itself. Pursuant to 11 C.F.R. § 110.11(c)(1)(iv), a disclaimer "need not appear on the front or cover page of the communication as long as it appears within the communication." The entire webpage containing the invitation forms the entire communication in which a disclaimer can be placed. Even if the invitation/webpage is considered to not have included a disclaimer, it would be obvious to the viewer of this invitation who paid for and approved this message. The invitation was found on the Frank Scaturro Campaign's website; stated that all contributions should be made payable to "Frank Scaturro for Congress"; and allowed people to sign into the Frank Scaturro Campaign's website via Facebook, Twitter, or email to make comments about the event.

Because the cited communications already contain a disclaimer or make clear who sponsored the message, Mr. Fertig's March 19th supplement serves only distract and harass the Respondents from their campaign efforts and also wastes the Commission's scarce resources.

II. Allegations of Missing "Printed Boxes"

Mr. Fertig further alleges that the Respondents violated 11 C.F.R. § 110.11(c)(2)(ii)¹ by failing to place the disclaimer language "in a printed box set apart from the other contents of the communication" on an email communication dated March 18, 2014 and four flyers. *See* March 19th Supplement at Exhibit A; March 28th Supplement at Exhibits A–D. Such a complaint truly elevates form over substance. Because "printed box" allegations are of a technical nature, the Commission has routinely dismissed such complaints when the disclaimer sufficiently and clearly identifies who approved and paid for the communication. *See* General Counsel's Report, MUR 6270 (Paul) ("Based on previous MURs with similar facts, the Commission exercises prosecutorial discretion and dismisses the allegation as to the lack of printed boxes on these mailers."); MUR 6274 (Miller) (dismissing allegations that communications lacked "printed box" disclaimers where the materials included the campaign's name and address); MUR 6153 (NMDLCC) (dismissing allegations of defective disclaimers for reasons such as a lack of a printed box where the message indicated that it was paid for by the campaign committee); MUR 6260 (Radzkowski) (dismissing allegations that fundraising letters lacked "printed box" disclaimers where the communications contained sufficient identifying information to prevent the public from being misled as to who paid for them).

In this case, the disclaimers on the email communications and flyers clearly state, "Paid for by Frank Scaturro for Congress." Furthermore, a recipient would have no issue

¹ As further evidence of Mr. Fertig's attempts to harass the Respondents, it should be noted that, in his supplement dated March 19, 2014, Mr. Fertig fails to correctly cite the provision for which he alleges there has been a violation, citing 11 C.F.R. § 110.11(c)(2)(i) and not 11 C.F.R. § 110.11(c)(2)(ii).

distinguishing the disclaimer language from the rest of the communication. For each communication, the disclaimer is of sufficient size to be clearly readable by the recipient of the communication and is printed in a color that contrasts with the background of the printed statement. Additionally, the disclaimer stands alone at the bottom of each message, separate from any other text or graphic component of the communication. In no communication have the Respondents attempted to hide the disclaimer language or mislead the recipient as to who paid for the message.

To the extent that any of the Respondents' previous communications were technically non-compliant, they have subsequently retained campaign finance law counsel to help ensure that all future messages fully comply with all applicable requirements.

III. Conclusion

For all of the reasons discussed above, the Commission should find that there is no reason to believe that Frank Scaturro, Frank Scaturro for Congress, and John F. Craven, individually and as treasurer of Frank Scaturro for Congress, violated FECA or any FEC regulation in any meaningful way, and the Commission should exercise its prosecutorial discretion and dismiss this matter promptly.

Sincerely,



Brett G. Kappel

Counsel for Frank Scaturro, Frank Scaturro for Congress, and John F. Craven, individually and as treasurer of Frank Scaturro for Congress